

3) Any LOA connected to such unrelated offers or inducements must clearly and conspicuously state on its face that the primary purpose of the LOA is to switch the consumer's current long distance telephone service to that of Respondent.

a) The LOA cannot state or imply that the primary purpose of the LOA is the unrelated offer or inducement;

b) The words "Application to Switch Long Distance Service" or words of similar import must appear as the initial heading on the face of the LOA;

c) The words "Application to Switch Long Distance Service" or words of similar import on the face of the LOA must be in a print larger and darker than any other print on the LOA, and those words must not be obscured in any manner by any logo, print or otherwise.

4) Any telemarketing promotion related to such offers or inducements must clearly inform consumers that a purpose of the offers or inducements is to switch consumers' long distance telephone service from their current long distance carrier to that of Respondent. Respondent must then furnish these consumers with an LOA that in all respects complies with paragraphs 5(b)(1) and (3) above before any switch of consumer's long distance telephone service is made.

5) Any offers or inducements which involve a prize, gift or award will comply with A.R.S. §13-3301 et seq.

6) Respondent will not state, imply or use any connection to a real or purported charity or non-profit organization in its offers or inducements.

7) Any verification mechanism must clearly and conspicuously disclose to consumers that they are agreeing to switch

1 their long distance telephone service from their current carrier to
2 that of Respondent.

3 8) Respondent or its agents will, prior to placing any
4 solicitation, advertisement, or display at a business location, clearly
5 and conspicuously disclose to the business that the material will be
6 used for the purpose of soliciting customers to Respondent's long
7 distance service.

8 9) Respondent will inform its employees, representatives,
9 agents, or assigns of all of the requirements set out in paragraph 5
10 above before those employees, representatives, agents, or assigns
11 promote Respondent's long distance telephone service with offers or
12 inducements unrelated to telephone service.

13 6. Respondent agrees to reimburse all Arizona consumers who had
14 their long distance service switched to Respondent as part of the
15 Matrix/Consortium 2000, Inc./Millennium Telecom, Inc. promotion(s) and
16 who:

17 a. Have requested reimbursement in the past either in writing
18 or by telephone from Respondent, or in writing to the Attorney
19 General's Office or any other governmental agency, the Better Business
20 Bureau, or their local exchange carrier, and which requests were
21 forwarded to Respondent; or

22 b. Request reimbursement within ninety days of the signing
23 of this Assurance by Respondent. Respondent will honor all requests
24 made orally or in writing directly to Respondent and all other requests
25 in writing which have been forwarded to Respondent either through the
26 Attorney General's Office or any other governmental agency, the Better
27 Business Bureau, or the consumers' local exchange carrier.

1 c. The amount of an eligible consumer's reimbursement shall
2 be determined by computing the following:

3 1) the cost of all service charges associated with
4 "switching" the consumer initially to Respondent's network and then
5 back to the pre-selected long distance carrier, if those costs have
6 been paid by the consumer; and

7 2) the amount which the rates applied to all long
8 distance calls placed by the consumer while switched to the
9 Respondent's service would have exceeded the rates the consumers would
10 have paid if their long distance service had remained with their pre-
11 selected carrier, including any discount plan. In order to collect on
12 this part of the reimbursement, Arizona consumers will have to provide
13 Respondent with a copy of the relevant telephone bills showing the
14 charges to be "re-rated."

15 3) Respondent will reimburse consumers in the amount
16 derived from paragraph 6 above within thirty days of receiving the
17 reimbursement request and may reimburse consumers by applying credit to
18 the consumers' local telephone bill or, at Respondent's discretion, by
19 check.

20 7. Respondent agrees to pay to the Arizona Attorney General upon
21 the signing of this Assurance the sum of \$7,905.00 (seven thousand,
22 nine hundred and five dollars) for reasonable costs, including
23 attorney's fees as authorized by A.R.S. §44-1530. In the event of any
24 bankruptcy petition on the part of Respondent, Respondent agrees that
25 this payment is to be considered punitive in nature.

26 8. The parties understand and agree that this Assurance of
27 Discontinuance does not constitute an adjudication as to any legal or
28 factual matter and in agreeing to the entry of this Assurance,

Respondent does not admit any of the allegations made by the Attorney General.

9. The parties further understand and agree that this Assurance shall not be construed as an approval of or sanction by the Attorney General of Respondent's business or any of Respondent's past, present, or future business practices, and that this Assurance does not in any way limit the right of the Attorney General to bring legal action against Respondent for any other acts, including those which violate the Consumer Fraud Act, A.R.S. §44-1521 et seq.

11. Charles G. Taylor represents that he is authorized to sign this Assurance on behalf of Respondent.

DATED this 6th day of ^{September} ~~August~~, 1994.

GRANT WOODS
Attorney General

SYDNEY DAVIS, Chief Counsel
Consumer Protection and Antitrust

Noreen R. Matts
NOREEN R. MATTS
Assistant Attorney General

MATRIX TELECOM INC.

By: Charles G. Taylor, Jr.
CHARLES G. TAYLOR, President

Approved as to form and content:

J. William Brammer
J. WILLIAM BRAMMER, Esq.
DeConcini McDonald Brammer Yetwin & Lacy
2525 East Broadway, Suite 200
Tucson, Arizona 85716
Attorney for Respondent

IN THE CHANCERY COURT OF PULASKI COUNTY, ARKANSAS
FOURTH DIVISION

STATE OF ARKANSAS ~~ex rel.~~
WINSTON BRYANT, ATTORNEY GENERAL

PLAINTIFF

vs.

Case No. 93-1035

CHERRY PAYMENT SYSTEMS, INC. d/b/a
CHERRY COMMUNICATIONS

DEFENDANT

FINAL JUDGMENT AND CONSENT DECREE

Plaintiff, State of Arkansas ~~ex rel.~~ Winston Bryant, Attorney General for the State of Arkansas (hereinafter "Attorney General") and Defendant Cherry Payment Systems, Inc. d/b/a Cherry Communications, Incorporated (hereinafter "Cherry") hereby consent to the entry of this Final Judgment and Consent Decree (hereinafter "Decree") as set forth below without trial or adjudication of any issue of fact or law.

THE COURT HEREBY FINDS THAT:

Parties/Jurisdiction/Procedural History

1. On February 17, 1993, this action was brought by the Attorney General against Cherry, an Illinois-based corporation that has been a reseller of long distance services in the State of Arkansas.

2. In his Complaint and Motion for Ex Parte Restraining Order, the Attorney General sought a permanent injunction against Cherry and alleged that Cherry, its agents, employees and representatives had engaged in violations of the Arkansas Deceptive Trade Practices Act

(Ark. Code Ann. §4-88-101 et seq.) and common law fraud.

3. This Court has subject matter jurisdiction of this action pursuant to Ark. Code Ann. §4-88-104. Venue is proper pursuant to Ark. Code Ann. §4-88-112(a) and §16-60-103(a).

4. On March 9, 1993, this Court entered an Agreed Order preserving the status quo pending the resolution of this action. Pursuant to the terms of the March 9, 1993, Agreed Order, Cherry, its officers, employees and agents, inter alia, agreed to refrain from taking any actions that would violate the Arkansas Deceptive Trade Practices Act.

Denial of Liability

5. The Attorney General and Cherry understand that Cherry expressly denies that it violated any provisions of the Arkansas Deceptive Trade Practices Act and common law fraud or that Cherry engaged in conduct as alleged in the Complaint filed in this matter.

6. The Attorney General and Cherry also understand that Cherry has entered into this Decree as a compromise and settlement of the Attorney General's allegations herein in order to avoid the inconvenience, expense and uncertainty of litigation.

Permanent Injunctive Relief

7. Cherry agrees to the entry of this Order and accordingly it is hereby ordered that Cherry, its officers, directors, agents, employees and representatives will abide

by all of the provisions of the Arkansas Deceptive Trade Practices Act, as now constituted or as may hereafter be amended. Further, in all future sales presentations, activities and solicitations in Arkansas, Cherry shall not commit any of the following acts:

- (a) Switch the long distance carrier of Arkansas consumers without their permission or knowledge;
- (b) Falsify the signatures of Arkansas consumers on Letters of Agency (hereinafter "LOAs");
- (c) Misrepresent to Arkansas consumers the uses or benefits of Cherry's services;
- (d) Use deception, fraud, or false pretenses in connection with the advertisement and sale of Cherry's services;
- (e) Misrepresent material facts in connection with the sale of Cherry's services;
- (f) Cause the long distance service of Arkansas consumers to be switched without contacting the consumer;
- (g) Mislead Arkansas consumers into believing that their current long distance provider would not change, but that they would receive Cherry's discount on their long distance bill should they select Cherry; and
- (h) Perpetrate fraud on Arkansas consumers.

8. Cherry shall comply with all Federal Communications Commission rules and regulations, and Arkansas laws relating to long distance telephone service as they currently exist or are otherwise amended.

9. Cherry will not cause the long distance carrier of any Arkansas consumer to be switched from their present carrier to Cherry or a carrier related to Cherry through

express written approval in the form of LOAs unless and until a consumer has given his or her full consent to such switch. In order to guarantee such written consent has been obtained, Cherry will utilize the following procedures:

- (a) Cherry's agents, employees and representatives shall clearly and conspicuously identify themselves by name and company to Arkansas consumers during any solicitations;
- (b) Cherry will cause each Arkansas consumer who purportedly signed an LOA to be called at the phone number indicated and verify that they signed the LOA and have agreed to switch to Cherry as their long distance carrier;
- (c) The verifying phone call will be made by an employee other than the employee who solicited the LOA and who does not work in the same area as the employee who solicited the LOA;
- (d) In addition to verifying the consent and signature of the consumer, the verifying employee shall record on the LOA some identifying information from the consumer (such as date of birth, mother's maiden name, etc.), including the verifier's name and the date the verification was made;
- (e) No switch in any consumer's long distance service shall be made until and unless all information has been memorialized; and
- (f) In the event an Arkansas consumer indicates that their signature was forged on the LOA or that they did not consent to a switch of their long distance carrier, the verifier shall immediately report the soliciting employee to the appropriate corporate authorities for investigation and discipline.

10. Cherry has represented that it presently is not conducting telemarketing sales in Arkansas. Should Cherry recommence the solicitation of Arkansas consumers through telemarketing, Cherry will not cause the long distance carrier of any Arkansas consumer to be switched from their

present carrier to Cherry, or a carrier related to Cherry, unless and until a consumer has given his or her full consent to such switch. In order to guarantee that the customer's consent has been obtained, Cherry will utilize the following procedures:

- (a) The soliciting employee shall clearly identify himself or herself by name and company and inform the consumer that he or she is consenting to a switching of long distance carriers from his current carrier to Cherry. Upon initial consent of the consumer, Cherry shall cause such consent to be verified by an independent third party not employed by Cherry;
- (b) The independent verifier shall clearly identify himself or herself and verify the fact that the consumer consents to a switch of his or her long distance carrier from their present carrier to Cherry. The verifier shall also request and memorialize identifying information from the consumer;
- (c) No switch in long distance service shall be made until and unless such verification has been completed;
- (d) In the event the verification process reveals that the consumer was not informed that they were consenting to a switch in long distance service, the third party verifier shall promptly report the soliciting employee to the appropriate corporate authorities for investigation and discipline; and
- (e) Cherry will engage in regular systematic monitoring of its solicitations to ensure compliance with this Decree.

11. Cherry will not utilize any incentive payments to any of Cherry's employees based upon the number of Arkansas consumers they sign up to switch long distance companies

which do not contain provisions for monitoring and ensuring that proper authorization is given by consumers and that employees are promptly disciplined for improper conduct.

12. Cherry shall review an employee's records if Cherry receives two (2) complaints or other information indicating that such employee has engaged in an unauthorized long distance change order, made misrepresentations to consumers, or has violated any provisions of this Decree. Cherry shall promptly terminate such employee for improper conduct.

Restitution

13. Cherry shall reimburse all unreimbursed Arkansas consumers who have notified the Attorney General, their local exchange carrier, long distance carrier or Cherry in writing within 120 days of the execution of this Decree, that a switch to a new long distance carrier conducted by Cherry was unauthorized or based upon misrepresentations to the consumer. Cherry shall be obligated to reimburse Arkansas consumers only if Cherry receives a written complaint from one or more of the aforementioned entities. Cherry shall reimburse these Arkansas consumers in the following ways:

- (a) Cherry shall pay all service charges associated with "switching" the customer back to their pre-selected long distance carrier; and
- (b) Cherry shall pay any difference between the costs of all long distance calls placed by the consumer while with Cherry or any long distance carrier currently or formerly affiliated with Cherry, and the rate the consumer would have paid if their long

distance service had remained with their pre-selected long distance carrier. This reimbursement is conditioned upon Arkansas consumers timely providing Cherry with: the relevant telephone bills showing the charges to be "re-rated"; the identity of the consumer's pre-selected long distance carrier; and the identity of any special promotional program in which the consumer may have been enrolled.

14. Cherry shall also pay refunds as prescribed in paragraph thirteen (13) to all Arkansas consumers who have had their long distance service switched to Cherry or a carrier affiliated with Cherry without their consent and have requested refunds in writing from Cherry in the past.

15. Consumer refunds shall be by check drawn on an account with a sufficient cash balance to fund all refunds and shall not consist of credits in any form. Cherry shall mail each consumer refund by First Class United States Mail, within forty-five (45) days of the receipt of the written request for each refund. Provided however, this 45 day period shall not apply if the consumer fails to provide Cherry with copies of documents or other information necessary for calculation of such refund. In that case, the 45 day period shall only begin upon Cherry's receipt of the necessary additional information. Should the consumer fail to provide the requested information in writing to Cherry within 30 days of Cherry's written request, the consumer shall have waived the re-rate portion of his or her refund and Cherry shall have no further obligation or duty.

16. Cherry is responsible for all costs associated with

the restitution process. The restitution check shall be mailed with a letter from Cherry describing the restitution process. The Attorney General reserves the right to approve the contents of the letter.

17. Cherry shall retain for twelve (12) months verification of all payments given to consumers pursuant to the process set forth in paragraph thirteen (13) of this Decree.

18. Cherry shall pay the amount of \$65,000 to the State of Arkansas. Cherry shall tender upon execution of this Decree a cashiers' check in the amount of \$15,000, payable to the Attorney General of Arkansas. The remaining \$50,000 shall be paid in ten monthly installments of \$5,000 each. The first \$5,000 installment is due on or before September 11, 1993. Each successive installment is due on or before the eleventh of the following month. Each installment must be paid by means of a cashiers' check drawn on an FDIC insured bank account.

19. The \$65,000 shall be disbursed as follows:

- (a) \$30,000 will be deposited in the Consumer Protection Enforcement Fund for enforcement of consumer protection laws, for costs including those of experts, economists and consultants in consumer protection litigation and investigations, and for consumer education. The Attorney General shall have sole discretion as to the manner for which said sum is ultimately utilized.
- (b) \$20,000 will be allocated as attorneys' fees.
- (c) \$15,000 will be allocated as court costs including investigative costs.

Bankruptcy

20. The lawsuit filed by the Attorney General was brought under the Deceptive Trade Practices Act and therefore, requested civil penalties, costs and attorneys' fees, which are part of this Decree. As such, consistent with applicable law, Cherry expressly recognizes and agrees that due to both the nature of this action and the nature of any and all sums due hereunder, said sums constitute nondischargeable debts in bankruptcy.

Resolution of Claims

21. The Attorney General and Cherry agree that this decree shall act as a final resolution of all pending claims with respect to Cherry within the State of Arkansas up to and including the date of executing this Decree. The Attorney General agrees not to commence any other action against Cherry for any existing claims based on the Arkansas Deceptive Trade Practices Act, other applicable statute(s) or common law.

Compliance and Modification

22. This Decree shall bind Cherry, its officers, directors, agents, successors and assigns, both now and in the future. This Decree sets forth the complete agreement between the Attorney General and Cherry and any modification shall be done by motion of either party. Cherry will take all steps necessary to insure that all its corporate officers and others with supervisory responsibilities

receive and review this Decree.

Severability

23. If any portion, provision or part of this Decree is held invalid, unenforceable or void for any reason whatsoever, that portion shall be severed from the remainder of this Decree and shall not affect the validity or enforceability of the remaining portions of this Decree.

Jurisdiction Retained

24. This Decree shall be filed with, and subject to, the approval of the Chancery Court of Pulaski County, Arkansas. Jurisdiction is expressly retained by this Court for the purpose of enabling any of the parties to this Decree to apply to this Court for such further orders as may be necessary or appropriate for the construction or carrying out of this Decree, for the modification of any of its provisions, or for its enforcement.

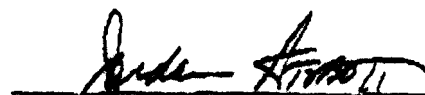
Effective Date

25. This Decree shall take effect immediately upon being signed by the Attorney General and Cherry and its approval and entry by this Court.

Authorization

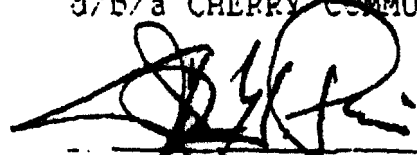
26. The undersigned representatives for the Attorney General and Cherry certify that they are fully authorized by the party they represent to enter into the terms and conditions of this Consent Decree and to legally bind the party they represent to the Consent Decree.

WINSTON BRYANT
Attorney General


J. Jordan Abbott
Assistant Attorney General
Consumer Protection Division
200 Tower Building
323 Center Street
Little Rock, Arkansas 72201

Dated August 12, 1993

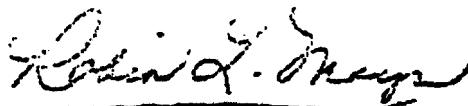
CHERRY PAYMENT SYSTEMS, INC.,
d/b/a CHERRY COMMUNICATIONS, INCORPORATED


Joe Purvis, Esq.
Dover & Dixon
425 West Capitol Street
Suite 3700
Little Rock, AR 72201

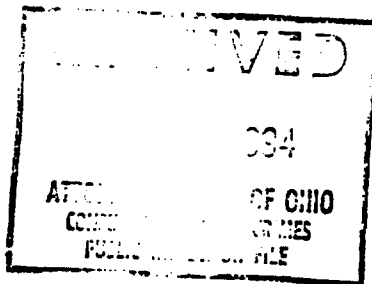
Dated 8/12/93

JJA:djb70

It is so ordered.


Chancellor

AUG 12 1993



IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, ex rel.
LEE FISHER
ATTORNEY GENERAL
30 East Broad Street
State Office Tower - 25th Floor
Columbus, Ohio 43215-3428,

Plaintiff,

v.

CHERRY COMMUNICATIONS,
INCORPORATED f.k.a. CHERRY
PAYMENT SYSTEMS, INC. d/b/a
CHERRY COMMUNICATIONS
2205 Enterprise Drive, Suite 501
Westchester, Illinois 60154,

Defendant.

CASE NO.

JUDGE

CONSENT JUDGMENT ENTRY
AND ORDER

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
94 MAR 31 AM 11:21
CLERK OF COURTS

PREAMBLE

This matter came on to be heard upon the filing of a complaint on February 28, 1994, by Ohio Attorney General Lee Fisher charging Defendant Cherry Communications, Incorporated f.k.a. Cherry Payment Systems, Inc., d.b.a. Cherry Communications with violations of the Ohio Consumer Sales Practices Act, Ohio Revised Code Section 1345.01 et seq. By signing this Entry, Defendant submits to the personal jurisdiction of this Court, consents to the entry and imposition of this Consent Judgment Entry and Order pursuant to Ohio Revised Code Section 1345.07(F), and acknowledges the right of Plaintiff and the Court to enforce the terms of this Consent Judgment Entry and Order. Without admitting or denying any

allegations giving rise to a determination that violations of Ohio law have occurred, Defendant also consents to the following findings of fact and conclusions of law reached herein by the Court.

FINDINGS OF FACT

1. Defendant Cherry Communications, Incorporated (formerly known as Cherry Payment Systems, Inc.) d/b/a Cherry Communications is an Illinois corporation which has done business in Ohio. Defendant's corporate offices are located at 2205 Enterprise Drive, Suite 501, Westchester, Illinois 60154.

2. On May 18, 1992, Defendant entered into a "telecommunications service agreement" with MATRIX Telecom, Inc. ("MATRIX"). MATRIX is a company which purchases long distance phone capacity (i.e. phone services) from the major carriers and resells these services to its customers. Under their contract, Defendant agreed to provide marketing services to MATRIX. Specifically, agents of Defendant were to contact Ohio consumers and solicit and sell to them MATRIX long distance phone services. Defendant received monthly commission payments from MATRIX based on the gross revenues attributed to these new customers.

3. From May to December 1992, Defendant obtained new Ohio customers for MATRIX. In December 1992, Defendant's business relationship with MATRIX was terminated.

4. Although Defendant presently acts as a reseller of long distance services on its own behalf, Defendant is not currently soliciting or selling goods or services to consumers in Ohio.

CONCLUSIONS OF LAW

5. This Court has jurisdiction over the subject matter of this case and over the parties hereto.

6. Defendant is a "supplier" as that term is defined by Ohio Revised Code Section 1345.01(C) because Defendant was engaged, at all times relative hereto, in the business of effecting or soliciting consumers to enter into "consumer transactions" as that term is defined by Ohio Revised Code Section 1345.01(A). Consequently, the Ohio Consumer Sales Practices Act and the Administrative Rules promulgated thereunder govern the business practices of Defendant.

7. The Ohio Attorney General, acting on behalf of the citizens of Ohio and in the best interest of this State, is the proper party to commence these proceedings under the authority granted to the Ohio Attorney General under the Ohio Consumer Sales Practices Act, Ohio Revised Code Section 1345.07.

8. A supplier's practice of switching consumers' long distance phone carrier without their authorization, a practice known as "slamming," is an unfair, deceptive and unconscionable act or practice prohibited by the Ohio Consumer Sales Practices Act, Ohio Revised Code Sections 1345.02(A) and 1345.03(A).

9. A supplier's practice of forging consumers' signatures to letters of authorization ("LOAs") is an unfair, deceptive and unconscionable act or practice prohibited by the Ohio Consumer Sales Practices Act, Ohio Revised Code Sections 1345.02(A) and 1345.03(A).

10. A supplier's practice of representing to consumers that their long distance phone carrier would remain the same but that they would receive a discount on their long distance phone bill by switching to the supplier's service when, in fact, by selecting the supplier's service the consumer's long distance phone carrier would change is an unfair, deceptive and unconscionable act or practice prohibited by the Ohio Consumer Sales Practices Act, Ohio Revised Code Sections 1345.02(A) and 1345.03(A).

11. A supplier's practice of representing that the subject of a consumer transaction has sponsorship, approval, performance characteristics, uses or benefits that it does not have is an unfair and deceptive act or practice prohibited by the Ohio Consumer Sales Practices Act, Ohio Revised Code Section 1345.02(A).

ORDER

For the purpose of effecting this Consent Judgment Entry and Order, it is therefore ORDERED, ADJUDGED and DECREED that:

A. Defendant, its agents, officers, servants, representatives, salespersons, employees, successors and assigns, and all persons acting in concert or participation with the Defendant directly or indirectly, through any corporate device, partnership, or association, in connection with any consumer transaction as defined by Ohio Revised Code Section 1345.01(A) are hereby permanently enjoined from committing any act or practice which violates the Ohio Consumer Sales Practices Act including, but not limited to, those acts and practices enumerated in paragraphs

eight through eleven (8-11) of this Consent Judgment Entry and Order.

B. In the event that Defendant recommences in Ohio to solicit consumers or to sell them goods or services, Defendant shall provide Plaintiff with written notice thirty (30) days prior to engaging in such activity. In addition to describing the goods and services the Defendant intends to sell to consumers or to solicit them to purchase, the notice shall describe the method that Defendant intends to use to contact consumers, e.g., door-to-door sales, telemarketing, etc.

C. Defendant shall comply with Federal Communications Commission rules and regulations, Public Utilities Commission of Ohio rules and regulations, and other federal laws that require providers of telecommunication services meet certain conditions before switching the consumer's long distance carrier in order to ensure that the carrier change was authorized by the consumer.

D. Defendant shall clearly and conspicuously disclose during any solicitation to switch a consumer's long distance service that the consumer is being asked to agree to switch their long distance service from their current carrier to Defendant's service. In addition, any verification mechanism used shall clearly and conspicuously disclose that the consumer is agreeing to switch their long distance service from their current carrier to Defendant's services.

E. Defendant shall not state or imply during any solicitation to switch a consumer's long distance service that the

consumer's long distance service will remain with the consumer's current long distance carrier and/or that Defendant will only be billing the service if such is not the case.

F. Beginning on the date of execution of this Consent Judgment Entry and Order, when switching a consumer from one long distance carrier to another, Defendant shall, at a minimum, comply with at least one of the following procedures:

1. Obtain a written Letter of Authorization (LOA) signed by the consumer. The LOA shall contain:
 - a) The consumer's billing name and address;
 - b) Each telephone number to be covered by the "PIC change order" (i.e., carrier change order);
 - c) A statement that the purpose of the LOA is to switch the consumer's current long distance carrier to Defendant's service and that the LOA authorizes Defendant to submit the required papers on behalf of the consumer to change the consumer's long distance service to Defendant's service;
 - d) Notification of the "PIC change fee" (i.e., carrier switching fee) which the consumer will incur (Defendant routinely reimburses the consumer for this fee).

The LOA shall be signed by the employee who solicited the switch of long distance service. In addition, each written LOA will be verified by a separate contact from an employee of Defendant other than the soliciting employee in compliance with paragraphs (D) and (E) of this Entry. The verifying employee shall write on the LOA other identifying information (e.g. the consumer's date of birth or the consumer's mother's maiden name) and sign the LOA. This verification step shall be completed before the PIC change is made; or

2. In an oral solicitation, obtain the consumer's authorization via an independent and qualified third

party physically located separately from Defendant's telemarketing representative who has obtained the consumer's oral authorization. The confirmation shall include an oral authorization to submit the PIC change order that includes verification data (e.g. the consumer's date of birth or consumer's mother's maiden name) and the confirmation shall be in compliance with paragraphs (D) and (E) of this Entry; or

3. In response to a consumer initiated contact, within three (3) business days of the consumer's request for a PIC change, Defendant shall send an information package by first class mail containing the following information:

- a) A statement that the information is being sent to confirm a PIC change order placed by the consumer within the previous week;
- b) The name of the consumer's current long distance carrier;
- c) The name of the newly requested long distance carrier;
- d) A description of any terms, conditions, or charges that will be incurred by the consumer;
- e) The name of the person ordering the change;
- f) The name, address and telephone number of both the consumer and the soliciting long distance carrier; and,
- g) A prepaid postcard which the consumer can use to deny, cancel or confirm the PIC change request.

The Defendant will be required to receive the consumer's postcard confirming the change order before the carrier change is made. The Defendant also shall comply with paragraphs (D) and (E) of this Entry; or

4. Obtain the consumer's electronic authorization, placed from the telephone number(s) on which the PIC is to be changed, to submit the order that confirms the information described in paragraphs (F)(1) (a) through (d) of this Entry in order to confirm the authorization. This shall be done by using toll-free telephone numbers exclusively for that purpose. Defendant also shall comply with paragraphs (D) and (E) of this Entry.

G. The consumers listed on Exhibit A attached hereto have contacted the Ohio Attorney General's Office or the Public Utilities Commission of Ohio complaining about an unauthorized carrier switch through Defendant. Within seven (7) calendar days of this Entry being filed with the Court, Defendant shall send these consumers a letter advising them of their right to participate in this settlement. The letter shall advise the consumers that they have sixty (60) calendar days to inform Defendant in writing of their decision to participate in this settlement. Defendant shall, on a monthly basis, provide Plaintiff with copies of the written responses that Defendant receives from these consumers. These consumers shall have the right to receive two types of reimbursement from Defendant:

- i) Defendant shall pay all service charges associated with "switching" the consumer to Defendant's service (usually MATRIX) and switching them back to their original long distance carrier; and
- ii) In those instances where a consumer would have received a more favorable rate had they remained with their original carrier, Defendant shall pay any difference between the costs of all long distance calls placed by the consumer while switched by the Defendant and the rate

the consumer would have paid if the consumer had remained with the consumer's original long distance carrier. This reimbursement is conditioned upon the consumer providing Defendant with the relevant telephone bills showing the charges to be re-rated, the identity of the consumer's original long distance carrier, and the identity of any special promotional program in which the consumer may have been enrolled.

H. Defendant shall issue the same refund as described in paragraphs (G) (i) and (G) (ii) of this Entry to all Ohio consumers who have had their long distance services switched through Defendant and who file a written complaint directly with Defendant, through the Ohio Attorney General's Office, the Public Utilities Commission of Ohio, or the consumer's long distance or local telephone carrier within one hundred twenty (120) days of the filing of this Entry. To be considered timely, the envelope containing the consumer's complaint must be postmarked within this one hundred and twenty (120) day time period or the complaint must be received within this period if delivery is by a method other than through the mail.

I. Refunds issued by Defendant under paragraphs (G) and (H) of this Consent Judgment Entry and Order shall be by check drawn on an account with a sufficient cash balance to fund all refunds and shall not consist of credits in any form. Defendant shall mail each consumer under paragraphs (G) and (H) of this Entry a refund, by first class United States mail, within forty-five (45) days of Defendant's receipt of the consumer's complaint. However, this forty-five (45) day time period for consumers under paragraphs (G) and (H) shall not apply, with respect to re-rating complaints of